

MINUTES
ZONING BOARD OF APPEALS
JUNE 8, 2007

Location: Conference Room, 2 Fairgrounds Road, Nantucket, MA
Call to Order: 1:03 PM
Members Present: Nancy Sevens, Dale Waine, Michael O'Mara (left at 3:30 PM), Edward Toole, Kerim Koseatac
Alternates Present: David Wiley, Burr Tupper
Absent: Kerim Koseatac
Staff: Linda Williams, Administrator
Department Staff: Marcus Silverstein, Zoning Enforcement officer

Approval of Minutes by unanimous consent: May 2007.

OLD BUSINESS APPLICATIONS:

1. MONCURE CHATFIELD-TAYLOR, (079-06), 91 WASHINGTON STREET EXTENSION:

Sitting: Sevens, Waine, O'Mara, Tupper

Planning Board Rec.: The Planning Board made a negative recommendation as there were issues of planning concern.

Public Comment: None at this meeting. There had been substantial comment at the first hearing.

Representing: Attorney Richard Glidden for the Applicants

Discussion: This matter had been continued without further discussion from September, October, November and December 2006, January, February, March, April, May 2007 and then to this meeting. Glidden asked that it be continued again without discussion to the July 13, 2007 meeting.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JULY 13, 2007 MEETING WITHOUT FURTHER DISCUSSION, AFTER OPENING AT SEPTEMBER 2006 MEETING. BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL AUGUST 24, 2007, (Waine/O'Mara).**

Conditions: NA

2. OLD NORTH WHARF COOPERATIVE, INC., (003-07), 29A, 29B AND 29C OLD NORTH WHARF:

Sitting: Sevens, Waine, O'Mara, Toole, Tupper (Wiley specifically recused himself)

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the Christmas holiday when this matter was first brought before the ZBA.

Public Comment: One letter in opposition from the Nantucket Land Council; David Wiley, speaking as a member of the public spoke against the request for relief and said that the matter should wait until the Harbor Plan was approved and the By-law changed. He argued that the Applicant should not be able to expand the pier at all even if only three would be provided. The Harbor Plan should be finished first and the ZBA should read the plan.

Representing: Attorney Arthur Reade and Attorney Whitney Gifford for the Applicant, Norm Hayes of BSC Group, Applicant's environmental consultant, Dave Porter, Applicant's structural engineer from Childs Engineering Corp.

Discussion: The matter had been continued without opening from the January, February, March, April 2007 meetings and then to this meeting, without opening at the request of the Applicant's attorney. Hayes made a lengthy presentation showing plans of the proposed, existing and general area of the dock. He stated that the catwalk would be enlarged and the pier reconstructed and a new float added, to make the structure safer and more compliant with requirements, such as emergency access. The existing catwalk was too narrow for any type of emergency access and the load bearing of the existing three-slip pier was inadequate. The Applicant had worked with the Hy-line and NIR in making modifications to

the plans. He stated that Dave Fronzuto, the Marine Superintendent and George Bassett of the Nantucket Boat Basin, had signed off on the design and the provision of the type of improvements in equipment on the dock and emergency access by the public. The equipment would be the same that the Town utilizes and parts could be interchanged. The new dock would be able to withstand being hit by commercial boats and more able to withstand strong storms. There would continue to be three slips after reconstruction and expansion. Reade stated that since 1929, the existing pier had been battered repeatedly and was no longer adequate. It had also gone through 13 different permitting events over that time and all other permits had been obtained with the ZBA permit being the last one to get in order to reconstruct the dock. Hayes stated that there would be no new virgin ground disturbed and all construction would be in areas that were already related to the dock. The dock would not extend beyond anything else that was on the water already. The area had been dredged in 1991 and again in 2000 and impacts on the area had already been addressed at the state level. Porter explained the functioning of the equipment on the dock, specifically the pump out station. In response to various questions from Board Members, Reade stated that the requirement of public access in emergency situations could be made part of the Decision.

The ZEO, Marcus Silverstein, disagreed with Applicant's interpretation that they qualified for special permit relief as a pre-existing nonconforming structure and use due to the imposition of a moratorium. He stated that no relief was available no matter what other permits were obtained already. This proposal was prohibited while the moratorium was in place. He read his statement into the record. He also stated that to get variance relief, all three prongs had to be met, without taking into account that the By-law says "or" not "and". He did not see the hardship either. It was not unique as there were other piers in the R-C zoning district, again without taking into account that the By-law stated that uniqueness is based upon the entire R-C zoning district, most of which is not on the waterfront. He added that while the moratorium was in place there was an absolute freeze on any changes in the harbor area. Reade disagreed and stated that the Applicant had the right to seek special permit relief under the moratorium. A property owner could not build a new pier or dock under the current situation but alterations and expansions of existing piers were not prohibited. The ability to alter and expand the pier was protected by state law and such protection would always be in place. He stated that the improvements to the dock were in the public interest, improved public safety and were necessary to fortify the structure which in turn would protect the Hy-line slip and channel access against damage. Reade added that there were certainly soil, shape and topography issues unique to any pier in the R-C zoning district.

Board Members questioned whether the same standards applied to the catwalk as separate from the pier and float. ZEO felt that the prohibition applied to the entire structure. Hayes added that as part of the license grant from the state in 1996, public access was required and at the moment, public access would not be safe as the structure was not safe. Sevrens stated that it appeared that the result would be to make the existing three slips better and would benefit public safety. There was general discussion about the various aspects of the plan by Board Members and the professionals. Board Members agreed to seek the advice of Town Counsel on whether the Board could grant special permit relief under the current moratorium, or was variance relief necessary to do the proposed work and whether there was a distinction to be made between the catwalk and the dock and float construction.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JULY 13, 2007 MEETING AFTER OPENING; BY THE SAME VOTE, AN EXTENSION FOR ACTION WAS AGREED TO UNTIL AUGUST 24, 2007, (Waine/Toole).

Conditions: NA

3. JANET P. MURPHY, TRUSTEE OF FISH LANE REALTY TRUST (010-07), 5 SPRING STREET:

Sitting: Sevrens, Waine, Toole, Wiley, Tupper (O'Mara specifically recused himself)

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: Attorney Sarah Alger for an interested party spoke in favor of the appeal.

Representing: Attorney Bruce Gilmore for the Applicant

Discussion: Gilmore had asked to have the matter continued without opening from the March, April, May 2007 meetings to this meeting. Gilmore explained that the property had been subdivided on December 13, 2004 under the state provisions of MGL 41-81L, which allowed the subdivision of lots if each lot contained a pre-1955 structure, even if the resulting lot became nonconforming dimensionally. Gilmore argued that the lot would then be protected as a pre-existing nonconforming lot and no variance relief was necessary to validate the lot, despite the common practice before this ZBA of hearing such requests for validation for the past 20 years under the so called "Dale Doctrine". If any relief was necessary, it would be by special permit under Section 139-33A for an alteration of a pre-existing nonconforming situation. Murphy had applied for a building permit to add a second floor on the existing dwelling on the smaller of the two lots and was denied by the ZEO on the grounds that the lot was not a valid lot and needed variance relief. He explained the "Norwell-Arch" case from May 2004 that seemed to allow such subdivisions and protection. There was substantial discussion about the relevance of that case. He explained that Land Court Judge Trombley had found that the protection afforded lots in MGL c 40A section 6 was at odds with the 41-81L process. He stated that variance relief was not required to alter the structure in that case for a residential use, distinguishing residential use from commercial use protection. The Judge specifically stated in a later case that the same protection did not apply to a barn and a house as an example. Both structures had to be residences. 41-81L subdivisions did not require approval by the Planning Board and had to be granted as an Approval Not Required subdivision of land without restriction or regard to the conforming nature of the newly created lots. In the *Branford v Town of Edgartown*, the Applicant could get a building permit as a matter of right on one of these nonconforming lots if the work was conforming. Gilmore argued that if any relief was necessary to add the conforming second floor space, then it would be by special permit. Applicant was before the ZBA to settle the appeal first and if necessary would return for special permit relief. The ZBA had three choices: overrule the decision of the Land Court Judge and state that variance relief was necessary to validate the lot and agree with the ZEO; overrule the ZEO and agree with the Land Court; or decide that special permit relief was necessary to alter the house, at which time the ZBA could also deny said request and then allow the Applicant to appeal the matter back to the Land Court for a final ruling.

There was substantial discussion about the subdivision itself with several questions from Board Members about the plan. About 300 feet had been purchased from an abutter to enlarge the lot to about 2,475 SF. Alger stated that only 20 feet of frontage was needed under 41-81L even though the minimum frontage requirement was 50 feet and the minimum lot size requirement was 5,000 SF. It was mentioned that the ZBA had seen many cases over the years of lots that were created by 41-81L action and that needed variance relief to be validated as a separately marketable and buildable lot from all adjacent lots and the Board had granted them all. It had been the prevailing feeling locally that though the lots could be created, that gave them no status under the Zoning By-law and still needed to be validated by the ZBA. Alger then stated that she supported the Applicant's position. She elaborated on the *Branford v Town of Edgartown* decision of the State Supreme Court. They upheld the Land Court decision that stated that if the ZBA found that the alteration and/or expansion of the nonconformity was substantially more detrimental, relief could be denied. In the converse, if there is no intensification, the Applicant is entitled to special permit relief.

The ZEO, Silverstein, made a lengthy presentation in opposition to the Applicant's arguments. He stated that the Norwell-Arch case protected the rights of property owners to subdivide their property under 41-81L and any changes to the residential structures would not require variance relief. However, he stated that there was no ruling on the dimensional nonconformities created by the ANR. The Judge did not overturn another case in *Sickel/Smalley*. The ZEO had Town Counsel's opinion and handed that out to the ZBA and had already handed it out to the attorneys without a vote of the Board to release the confidential opinion of Town Counsel requested several weeks before by the ZBA, not the ZEO, who had no right to release it to the public without a vote of the ZBA only. The Board then quickly took action. Upon a motion made by Edward Toole and seconded by David Wiley, the Board voted unanimously to release the opinion to the public. The Board had not received the opinion in a timely

manner to consider it prior to the meeting as there was a delay in the incoming email on the office computer and it did not arrive until after the meeting and was not even produced until June 7th, the day before the meeting. The ZEO stated that neither the Norwell-Arch decision nor 41-81D gave protection to the dimensional nonconformities created by the ANR and variance relief was necessary to validate the lot. He also stated that the structure did not become grandfathered if there was no violation to begin with. He discussed "infectious invalidity". He argued that the ZBA had to first grant variance relief to validate the lot and could then grant special permit relief to alter the structure. The structure could be made conforming as to setbacks and ground cover and would not need any relief at that point for the alterations. He also cited the "Citco" case.

There was discussion about the perceived deficiencies of Town Counsel's opinion by all concerned. Gilmore and Alger expressed confusion as to why Norwell-Arch and all case law since 2004 on this matter were not specifically addressed in the letter when that had been the request of the ZBA as to relevance. It left open the question as to whether variance or special permit relief was necessary in any instance. If the house was made conforming, would any relief be needed? If the lot was in question, is variance relief needed to validate it? Both Alger and Gilmore agreed with Town Counsel's opinion up until 2004 but cannot agree with not addressing all of the cases since then in order to clarify the matter for the ZBA.

Action/Vote IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JULY 13, 2007 MEETING AFTER OPENING IN ORDER TO GET FURTHER CLARIFICATION FROM TOWN COUNSEL. BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL AUGUST 24, 2007, (Waine/Wiley).

Conditions: NA

4. BARBARA B. SPITLER, (014-07), 85 MILLBROOK ROAD:

Sitting: Sevens, Waine, O'Mara, Tupper

Planning Board Rec.: The Planning Board made a favorable recommendation for either form of relief.

Public Comment: There were letters and comments from an abutter's attorney at the last meeting at which testimony was taken.

Representing: Attorney Arthur Reade for the Applicant

Discussion: The matter had been continued after opening in March 2007, continued to April, May and then to this meeting. Reade asked for the matter to be put over to July 13, 2007 as one of the sitting Board Members was not going to present for this meeting.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JULY 13, 2007 MEETING WITHOUT FURTHER DISCUSSION; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL AUGUST 24, 2007, (Waine/O'Mara).

Conditions: NA

5. MARIANNE BOESKY (026-07), 290 POLPIS ROAD:

Sitting: Sevens, Waine, O'Mara, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Jeff Stetina for the Applicant

Discussion: Stetina requested that the matter be continued without opening at the April and May meetings and asked that the matter be withdrawn without prejudice at this meeting.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO ALLOW THE WITHDRAWAL OF THE APPLICATION WITHOUT PREJUDICE, (Waine/O'Mara).

Conditions: NA

6. ALICE B. BURNHAM, (030-07), 12 ½ SHERBURNE TURNPIKE:

Sitting: Sevens, Waine, O'Mara, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Arthur Reade

Discussion: Reade asked that the matter be put over to this meeting from the May 2007 meeting. Reade asked that the matter be put over to September 14, 2007 meeting as legislative action was pending to correct the situation due to a favorable vote at the 2007 Annual Town Meeting.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO SEPTEMBER 14, 2007 MEETING WITHOUT FURTHER DISCUSSION; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL OCTOBER 26, 2007, (Waine/O'Mara).

Conditions: NA

7. CANDACE A. MILLER AND EDWARD M. BERNARD (031-07), 8 JEFFERSON LANE:

Sitting: Sevens, Waine, O'Mara, Toole, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: There were two emails from abutters in opposition. There were several emails and letters from abutters in favor of the request for relief. Joe Myskins from 40 Pine Street, spoke in favor of the application at the hearing. The new house was an appropriate design for the neighborhood and an improvement.

Representing: Attorney Arthur Reade and Attorney Whit Gifford for the Applicants, Candy and Ed Bernard for themselves as Applicants, Joe Topham designer for the Applicants

Discussion: Reade had asked that the matter be put over to this meeting from the April 2007 meeting. This matter was taken up with the following matter in BOA File No. 032-07. Reade gave a history of the property. The lot on Pine Street had been owned by the Burdick family and in 1952 the lot on Jefferson Lane had been conveyed to the former owners of Applicants' lot, the Ferreira family, with Burdick reserving an about one-foot strip of land, preventing the lot from having any frontage on Jefferson Lane. The Applicants were before the ZBA to cross convey an about 46 SF parcel between the two lots in order to maintain the existing nonconforming lot areas, but give the one-foot strip to the lot on Jefferson Lane in order to correct the frontage nonconformity. The Board voted to grant the relief unanimously to reconfigure the lot lines on both lots and then separately took up the matter concerning the demolition and reconstruction, including expansion of the nonconforming ground cover, on the lot on Jefferson Lane. Reade pointed out that there were no zoning requirements for frontage or lot size at the time the lots was conveyed out of common ownership and was thus grandfathered. Ferreira built the now dilapidated house in the 1950's and the new owners proposed to demolish it and build a dwelling that would be conforming as to setbacks, eliminating the existing nonconforming setback. The existing structure had a ground cover of about 520 SF (26%) and the new, HDC approved structure, would be about 865 SF (43%). Pictures of the house were submitted. Topham explained the design process. Board expressed desire to have the same language as in the 7 Eagle Lane Decision that related to protection of the roadway and surrounding properties during construction inserted into this decision.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT UNDER SECTION 139-33A(8) TO RECONFIGURE THE LOT LINES AS PROPOSED SEPARATELY FROM THE RELIEF TO DEMOLISH, RECONSTRUCT AND INCREASE GROUND COVER; SECTION 139-33E(2)(a) TO DEMOLISH THE EXISTING DWELLING AND CONSTRUCT A NEW DWELLING WITH INCREASED GROUND COVER BUT CONFORMING TO SETBACKS AS PROPOSED, (Waine/Tupper).

Conditions: Exhibit A; HDC; maximum ground cover 865 SF; minimum of one parking space on site; conform to setbacks; no exterior construction between June 15 and September 15.

8. LE SELECT PROPERTIES, LLC (032-07), 42 PINE STREET:

Sitting: Sevrens, Waine, O'Mara, Toole, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Arthur Reade and Attorney Whit Gifford for the Applicant

Discussion: Attorney asked that the matter be put over to this meeting from the April 2007 meeting. This matter was taken up with the previous matter in BOA File No. 031-07.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT UNDER SECTION 139-33A(8) TO RECONFIGURE THE LOT LINES AS PROPOSED,** (Waine/Tupper).

Conditions: Exhibit A.

NEW BUSINESS:

9. LONGFIN, LLC, D/B/A HOLDGATE PARTNERS, (047-07), OFF MILESTONE ROAD, BARNARD VALLEY ROAD:

Sitting: Sevrens, Waine, O'Mara, Toole, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: Attorney Melissa Philbrick for some concerned abutters

Representing: Attorney Bill Hunter for the Applicants

Discussion: Hunter asked that the matter be continued without opening to July 13, 2007 meeting in order to address neighbors' concerns. Philbrick concurred.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JULY 13, 2007 MEETING WITHOUT OPENING,** (Toole/O'Mara).

Conditions: NA

10. ISLAND MANAGEMENT, INC., (048-07), 44 SURFSIDE ROAD:

Sitting: Sevrens, Waine, O'Mara, Toole, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Julie Fitzgerald for the Applicant, Michael O'Reilly for himself as Applicant

Discussion: Fitzgerald gave a brief over-view on the past relief granted to the Applicant. The Applicant was now before the ZBA seeking a modification of the previous Decision that allowed a smoking deck to be constructed onto the rear of the structure. There had been issues with noise and the Applicant wished to enclose a portion of the deck with a canopy, sides and a door in order to provide a buffer between the noise inside and the outside smoking deck. The enclosed about 454 SF of deck area could not be used for smoking as it had a top according to the Health Department. No service would be allowed on either part of the deck and there would be no tables provided. The existing bench seating would be maintained and there would be no increase in the occupancy of the structure. A super majority of the Board Members felt that this would be a benefit to the neighborhood with the minimization of noise. There was no ground cover issue as the area had been changed from Residential-10 to Residential-Commercial-2 and there was no increase in the parking requirement.

Action/Vote: **IT WAS VOTED FOUR IN FAVOR (WAINE, O'MARA, TOOLE, TUPPER) AND ONE OPPOSED (SEVRENS) TO GRANT THE REQUESTED MODIFICATION OF THE PREVIOUS DECISION TO ALLOW THE ENCLOSURE OF A PORTION OF THE REAR DECK AS PROPOSED; BY THE SAME VOTE THE SITE PLAN REVIEW WAS WAIVED UNDER SECTION 139-23,** (Waine/Toole).

Conditions: Relevant conditions from previous Decisions; no seating, but benches are allowed; no increase in occupancy; no service to the deck; Exhibit A.

11. C. BOWEN SMITH AND JANET S. SMITH, (049-07), 4 LOWELL PLACE:

Sitting: Sevens, Waive, Toole, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Arthur Reade for the Applicant, Joe Topham, designer for the Applicants

Discussion: Reade stated that the Applicants proposed to increase the height of the single-family dwelling within the existing footprint, demolish the existing concrete garage, rebuild a new garage on the same footprint, and construct an addition to connect the two structures. The existing ground cover would be increased from about 32.77% to about 38.1%. Applicants propose to maintain the nonconforming northerly setback distance of about 4.4 feet, in a district that requires a minimum side yard setback of five feet. There was a discussion about the need for a variance to put the garage back into the setback once removed. After discussions with the Board, which expressed reluctance to grant a variance for this aspect of the proposal and asked that the structure be moved out of the setback area, Reade stated that his clients would meet the northerly side yard setback. The lot was already nonconforming as to ground cover and thus special permit relief was available to increase it. The HDC had already approved the alterations and demolition. To the extent that the garage had to be cut back in order to meet the setback requirement on the northerly side, an amendment of the HDC approval would have to be made. There would be no access to the garage directly from the house.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT UNDER SECTION 139-33A TO EXPAND AND ALTER THE EXISTING SINGLE-FAMILY DWELLING AS PROPOSED, INCLUDING EXPANDING GROUND COVER; SECTION 139-33A(9) TO REMOVE/REPLACE/EXPAND EXISTING GROUND COVER AS PROPOSED; VARIANCE RELIEF WAS NOT GRANTED AS THE NORTHERLY SIDE YARD SETBACK REQUIREMENT WOULD BE MET, (Waive/Wiley).**

Conditions: Exhibit A; HDC, with acknowledgement that the northerly side yard alteration would have to go back to the HDC for further amendment to the approved plan; maximum ground cover of 38.1%; garage would meet northerly side yard setback requirement; no exterior construction related to this project shall be done between June 15th and September 15th.

12. PETER H. TULLOCH AND VIRGINIA C. TULLOCH, TRUSTEES OF VILLAGE WAY NOMINEE TRUST, (050-07), 5 VILLAGE WAY:

Sitting: Sevens, Waive, Toole, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Arthur Reade for the Applicants, Lisa Botticelli architect for the Applicants

Discussion: Reade stated that the house was built before 1972 and the siting and ground cover nonconformities were grandfathered. In 1978 an additional about 12 SF was constructed on the northerly side of the house increasing the already nonconforming ground cover. This work was done without the Building Department requiring a special permit at the time and subsequently issued a CO. The owners now wish to validate that expansion by special permit and expand the structure in a vertical manner, with a portion of the new second floor space to be constructed within the required westerly side yard setback area. The westerly side yard intrusion would not be made more nonconforming and there would be no further expansion of the ground cover under this Application. In 1978 an affidavit was required by the Building Department and filed at the Registry of Deeds merging the northerly lot with this lot for zoning purposes. The Applicants owned both sides of the paper road that separated the lots. It was pointed out that no matter whether they were merged or separated, the southerly lot was still nonconforming as to ground cover and lot size. A new foundation would also be constructed under the dwelling.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT UNDER SECTION 139-33A TO VALIDATE THE 1978 INCREASE IN GROUND COVER, TO ALLOW VERTICAL EXPANSION OF THE STRUCTURE IN THE SETBACK**

AND TO ALLOW PLACEMENT OF A NEW FOUNDATION UNDER THE STRUCTURE AS PROPOSED, (Toole/Waine).

Conditions: Exhibit A; HDC; no expansion of the ground cover or in setback without further relief; no increase in nonconforming setback.

13. JOHN L. COLTON, (051-07), 308 POLPIS ROAD:

Sitting: Sevens, Waine, Toole, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Arthur Reade for the Applicant, Jeff Blackwell and Art Gasparo, surveyors for the Applicants, Steve Roethke, designer for the Applicant

Discussion: Reade explained that the setback intrusion was unintentional and involved a small corner of the porch, with the rest of the property and structure conforming to zoning requirements. The porch was clearly on the approved HDC plans. Unfortunately, according to Gasparo, those plans were not transmitted to him. Due the complexity of the foundation plan he was presented with he sited the house according to that plan not realizing that there was a porch. The porch piers did not show on the foundation plan as they did not have to be engineered but were the responsibility of the Applicant and builder to add on. The lot was large and the house was sited at 22 feet from the lot line. He would be more diligent about making sure that he had the architectural plans approved by the HDC in the future. It was an oversight on his part as he was focused on the foundation plans. The porch corner was sited as close as about 17.5 feet rather than the 20 feet required. Blackwell stated that the siting could have been corrected had they known earlier. There would have been no issue about moving the house over and no advantage was gained by siting the house in the current location. Blackwell stated that no one else was at fault, not the designer, owner or builder as they relied upon the stakes. Toole asked if it was not the responsibility of the owner to know there is a problem. Blackwell stated that it was not generally the owner's mistake. They hire competent professionals to do the work and in this case there was a mistake concerning which plan was used. They had to protect the client's interests. Roethke agreed that it was a complicated foundation with thick walls and the most complicated that he had ever worked on. The engineer was not involved with the porches or stoops.

Action/Vote: IT WAS VOTED FOUR IN FAVOR (WAINE, TOOLE, WILEY, TUPPER) AND ONE OPPOSED (SEVRENS) TO GRANT THE REQUESTED SPECIAL PERMIT UNDER SECTION 139-16C(2) TO VALIDATE THE UNINTENTIONAL SETBACK INTRUSION, (Waine/Wiley).

Conditions: Exhibit A; HDC; no further building in the setbacks.

14. DARYL ACHESON WESTBROOK, AS TRUSTEE OF DAW NOMINEE TRUST, (052-07), 16 BAXTER ROAD, SIASCONSET:

Sitting: Sevens, Waine, O'Mara, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Arthur Reade for the Applicant

Discussion: Reade asked that the matter be continued without opening to July 13, 2007 to reassess the project and amend the filing.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JULY 13, 2007 MEETING WITHOUT OPENING, (Waine/O'Mara).

Conditions: NA

15. WALTER W. GRANT, (053-07), 49 NONANTUM AVENUE:

Sitting: Sevens, Waine, Toole, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: There were neighbors present, Mr. and Mrs. Hammond of 6 Dunham Street, Eric Stone of 46 Nonantum Avenue, Fred Hamou of 48 Nonantum Avenue, who expressed concerns about the destabilization of the bank with further construction, and not specifically about the design or placement of the new additions in the required setback areas.

Representing: Attorney Arthur Reade for the Applicant, Steve Roethke, designer for the Applicant

Discussion: Reade stated that the current owner had purchased the lot a few years ago from a person who had bought the property from the original owner who had obtained a previous grant of variance relief in 1997 to move the house back into the setback due to erosion and add an addition. The structure was supposed to be no closer to the northerly front yard lot line than 23 feet and no closer to the westerly lot line than three feet. The structure actually ended up sited as close as about 21.5 feet and about 1.7 feet, respectively. A modification was needed to validate that siting. In addition, the Applicant proposed to construct new additions onto the structure that would not come any closer to the lot lines than 21.5 feet and 1.7 feet, effectively enclosing a portion of the westerly deck to increase living space. The HDC has already approved the additions. Roethke explained the plans. There were no issues with ground cover as the property also included the area below the bank to the water. The Applicant wanted to keep the structure low and the alterations would include a two-foot raise of the ridge height within the setback areas. Board Members were concerned about adding structure/massing onto areas of the structure that were not supposed to be there, particularly in the open deck area on the westerly side. Reade responded and said that at this point the unapproved setback intrusions were protected by the curative statute provisions as it had been more than six years since the violation and Applicant was entitled to keep the setback as is regardless of what the Decision said. Members had little issue with modifying the Decision to show the actual setbacks but had concerns with putting massing closer than three and 23 feet. Reade stated that the lot was constrained by the eroding bluff and that his client did not want to go up in height any farther. The new additions would be one-story. It was better to go out to keep one-story. Some Members were concerned about further construction close to the bank. Roethke stated that part of the addition would be to add another bedroom. There was a three bedroom septic and only one in the house at the moment. There would be two bedrooms when the alterations were done. Reade asked to continue the matter in order to address the concerns of Members and neighbors.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JULY 13, 2007 MEETING AFTER OPENING, (Toole/Wiley).

Conditions: NA

16. TOWN OF NANTUCKET, LESSOR, AND FOR NANTUCKET HUNTING ASSOCIATION, INC., LESSEE (054-07), MADAQUESHAM VALLEY ROAD:

Sitting: Sevens, Waine, O'Mara, Toole, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Emily Avery for the Applicants

Discussion: Avery asked that the matter be put over to the July 13, 2007 meeting without opening as the Applicants were still in discussions with other entities about the proposal.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JULY 13, 2007 MEETING WITHOUT OPENING, (Waine/O'Mara).

Conditions: NA

The meeting was adjourned at 4:08 PM (Waine/Wiley)

Respectfully submitted by Linda Williams, recording staff.

